

Comments received on WVABCA Legislative Rules – 175 CSR 2

Comment 1:

By: Drizly – Jacqueline Flug, General Counsel/ Senior Vice President

Dated: June 23, 2021

Summary: The company has an issue with a provision of 175 CSR 2 §3.4.6.e.5.B., and §3.4.6.e.5.B.ii., which there is a similar provision at 176 CSR 1 §3.11.f.6., and §3.11.g.6.

The comment relates to the requirement of the Third Party Delivery licensee to collect a stored record and image of purchaser's legal identification when completing delivery of a growler. The concern focusses on privacy laws and the potential for such private data to be hacked or perhaps even maintained in an unsecure manner.

Response: The WVABCA acknowledges the statute does require a method to collect a person's legal identification or information and has developed an alternative method to ease the collection of a stored record and image. The alternative method from 175 CSR 2 §3.4.6.e.5.B., will be amended for clarity

Comment 2:

By: Staff – internal communication

Dated: June 25, 2021

Summary: Can one-day charitable rare, antique, or vintage liquor auctions conduct multiple events to be held on consecutive days? Please clarify in the rule.

Response: No, an edit will be made at 175 CSR 2 §4.17.2.k.

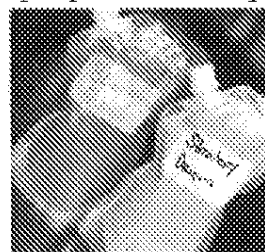
Comment 3:

By: Staff – internal communication

Dated: June 25, 2021

Summary: Can a craft cocktail growler be a sealed plastic bag or plastic cup with a lid and a straw hole? Please clarify.

Response: The Legislature authorized plastic as a material for craft cocktail growlers only (not other growlers). There are concerns of whether such a growler would qualify as a sealed original container so certain limitations have been placed on the growler form, material, filling, refilling and sanitization process. The rule will be clarified at 175 CSR 2 §3.4.6.c.1. and §3.4.6.c.5. A plastic cup with a lid is not permissible since it is an open container. Other plastic that meets requirements may be permissible. Such as a tamper-proof and tamper-evident bag. See example (the labeling is not sufficient on the bag) of plastic bag and tamper proof and tamper-evident cap:



Comment 4:

By: Richie Heath, WV Hospitality & Travel Association

Dated: June 30, 2021

Summary: The comment relates to limited entertainment in private outdoor dining and private outdoor street dining areas and interpreting the law in the broadest manner and an expression that Commissioner may or may not fairly determine what is limited entertainment may encompass.

Response: Again, the emphasis in these areas is on “outdoor dining”. Dining is the process of eating a meal at a licensee and is not a party, festival or concert. However, some recorded music or limited live music, such as a solo musician may be nice for ambiance in private outdoor dining and private outdoor street dining areas. A fair and festival license is the appropriate license for a party, festival or concert. Lastly, the Commissioner always has full discretion and a licensee who objects to Commissioner’s decision can request an administrative hearing. Some edits for clarity will be added to 175 CSR 2 §3.4.11.a. and b.



June 23, 2021

VIA E-MAIL

Anoop Bhasin, General Counsel
West Virginia ABC
900 Pennsylvania Avenue, 4th Floor
Charleston, West Virginia 25302

Re: Proposed Rules

Dear Ms. Bhasin:

I write on behalf of Drizly, the nation's largest platform for on demand alcohol delivery. Drizly connects consumer with local retailers in a compliant manner in over 130 markets nationally. I write concerning the proposed changes to Title 175 Section addressing the off-premise delivery of alcoholic beverages. More specifically, I write concerning the proposed rules in Sections 3.4.6.e.5.B and 3.4.6.e.5.B.ii which appear to contradict themselves.

Section 3.4.6.e.5.B states:

Any mobile ordering application or web-based software used *shall create a stored record and image of the purchasing person's legal identification* and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information; and *(Emphasis Added)*.

Yet, Section 3.4.6.e.5.B.ii creates an alternative means of recording identification data that does not involve a stored image. If the agency insists that all web-based software or ordering applications store an image, then the alternative in Section 3.4.6.e.5.B.ii is meaningless as no one may avail themselves of this alternative.

The alternative means of recording data is important for those that engage in e-commerce as privacy laws such as W. Va. Code §46A-2A-101 set strict standards for how this data must be maintained. Accordingly, because a driver's licenses contain large amounts of personally identifiable information most entities choose not to store it and avoid being targets for cyber crimes. Additionally, in the context of local licensed retailers, these businesses tend to be ill-equipped to retain sensitive personally identifiable information in a secure manner as they are in the business of selling alcoholic beverages not data security.

Accordingly, Drizly respectfully asks that Section 3.4.6.e.5.B. be amended to remove the word "shall" and replace it with the word "may" or alternatively incorporate language from Section 3.4.6.e.5.B.ii.

Thank you in advance for your time and attention to this matter.

Sincerely,

Jacqueline Flug
General Counsel/ Senior Vice President

WVABCA
OFFICE

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June 30, 2021

Anoop Bhasin
General Counsel
WV Alcohol Beverage Control Administration
900 Pennsylvania Ave., 4th Floor
Charleston, WV 25302

RE: Written Comments on Proposed WV ABCA Legislative Rules

Dear Mr. Bhasin,

On behalf of the West Virginia Hospitality & Travel Association (WVHTA), I am writing today to share written comments on the WV Alcohol Beverage Control Administration's (WVABCA) two proposed legislative rules on private club licensing (175-02) and nonintoxicating beer licensing operations and procedures (176-01).

WVHTA is extremely supportive of the recent efforts of Governor Justice, members of the Legislature and the WVABCA to provide greater flexibility with respect to West Virginia's alcoholic beverage laws and regulations. The passage of H.B. 2025 during the 2021 Regular Session was a critical step in preserving many of the new concepts developed during the recent State of Emergency caused by the COVID-19 pandemic. Its effective implementation will help the businesses of many in West Virginia's hospitality and travel industry as we emerge from the pandemic and face a pent-up demand from consumers to return to traditional hospitality, travel and dining opportunities.

As an initial matter, we would make one general suggestion with respect to both proposed rules 175 CSR 2 and 176 CSR 1. It is clear that the legislative intent of H.B. 2025 was to provide greater flexibility and freedom with respect to the state's alcohol beverage laws in order to promote economic development throughout the state. To that end, we would simply encourage the WVABCA to keep this legislative intent in mind as it promulgates both rules through the legislative rule-making review process.

WVHTA members are still very much digesting the 100+ page statute enacted through H.B. 2025, along with the more than 100 pages of proposed legislative rules. Members of the hospitality and travel industries are very much trying to familiarize themselves with how many of the newly enacted concepts and licenses will benefit their businesses. As they continue to do so, we would request that the WVABCA take every opportunity to preserve the legislative intent of H.B. 2025 in its legislative rules and ensure that the enhanced flexibility and relaxed restrictions are maintained through the legislative rules. H.B. 2025 was intended to make the operation of the state's alcohol beverage laws easier for licensees and consumers alike. We hope that the WVABCA will continue to preserve that intent in the proposed rules.

Based upon the feedback we've received from WVHTA members to date, we would also submit one specific recommendations for your consideration at this time.

Proposed rule 175 CSR 2 addresses the issue of private outdoor dining and private outdoor street dining in numerous places throughout the rule. Of note, the proposed rule includes language with respect to the authorization of "limited entertainment (ex. recorded music or limited live music) or alcoholic beverage service" in the outdoor dining or street dining area. *See, for instance*, WV CSR § 3.4.11.a-b. As written, the proposed rule would require the Commissioner to deny "such entertainment or alcoholic beverage service" if, in his or her determination, the entertainment or beverage service "has the appearance or function of a festival, event, concert, or in any other manner exceeds what is necessary for..." private outdoor dining or private outdoor street dining.

Many WVHTA members believe that this language is excessively vague and could lead to disparate treatment amongst licensees. For instance, it is unclear what would constitute the "appearance...of a festival, event...[or] concert." As proposed, the rule also includes an extremely broad catch-all that raises enforcement concerns, as it is uncertain what exactly would be included in the Commissioner's determination that entertainment or beverage service "exceeds *what is necessary for*" outdoor dining or outdoor street dining. As neither the authorizing statute nor the proposed rule define "what is necessary for" outdoor dining services, we fear this provision is ripe for abuse.

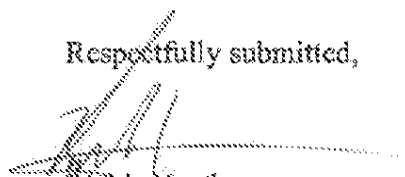
Understanding what we believe the initial intent of WVABCA is with respect to the provision of limited entertainment and alcohol beverage service, we would suggest that something along the following lines would eliminate existing ambiguities and strengthen the provisions overall:

The Commissioner may, at his or her discretion, authorize limited entertainment (ex. recorded music or limited live music) or alcoholic beverage service in the private outdoor dining area, however, *where any such entertainment or alcohol beverage service appears to otherwise meet the requirements of a temporary event, fair or festival, the Commissioner may, at his or her discretion, require the licensee to obtain a special license for a private fair and festival pursuant to W.Va. Code § 60-7-8a.*

Should this or similar language be amenable to the WVABCA, we would recommend a global change to all such private outdoor dining and outdoor street dining references within 175 CSR 2.

We thank you for your time and consideration of these comments. We also greatly appreciate the efforts of the WVABCA to date to familiarize licensees and consumers alike with the provisions of H.B. 2025. We know that many have had questions regarding the implementation of the new laws and the informational materials provided by the WVABCA on its web site have been extremely useful. To the extent that you have questions regarding any of these suggestions, or would like to discuss our comments on the proposed rules further, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richie Heath", is written over a horizontal dotted line.

Richie Heath
WVHFA Executive Director